



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Mark R. Wisner
Wisner & Associates
Suite 400
1177 West Loop South
Houston TX 77027-9012

COPY MAILED

JAN 13 2009

OFFICE OF PETITIONS

In re Application of :
Schmalenberger :
Application No. 09/442,819 :
Filed: November 18, 1999 :
Attorney Docket No. SCHC,002 :
For: CAPITAL MARKET INDEX08 :
ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed August 11, 2008 (certificate of mailing date August 7, 2008), requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action, mailed September 20, 2007, which set forth an extendable three (3) month period for reply. The Office contended that this application became abandoned on December 21, 2007 for failure to reply to the September 20, 2007 non-final Office action. A Notice of Abandonment was mailed on March 28, 2008.

Petitioner requests withdrawal of the holding of abandonment based on the assertion that a petition for a three month extension of time and an amendment were timely filed on certificate of mailing date March 20, 2008 and received in the Office on March 24, 2008. The undersigned finds this argument completely convincing, as these documents are present in the application file and Office financial records shows that the required three month extension of time fee was charged on March 24, 2008. The certificate of mailing date for the payment was March 20, 2008. Therefore, the three month extension of time and amendment were timely filed.

The petition under 37 CFR 1.181 is **granted**, the holding of abandonment is withdrawn, and the March 28, 2008 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

Accordingly, the application file will be forwarded to Technology Center A.U. 3693 for consideration of the amendment filed on March 24, 2008 (certificate of mailing date March 20, 2008).

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

In re Application of: § Atty Docket No.: SCHC,002
Warren F. Schmalenberger §
§
Serial No.: 09/442,819 § Examiner: D.S. Felten
§
Filed: November 18, 1999 §
§
For: CAPITAL § Group Art Unit: 3693
MARKET INDEX §

COMMISSIONER OF PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

CERTIFICATE OF MAILING (37 C.F.R. 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date indicated below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313.

Mark R. Wisner, Registration No. 30,603

August 7, 2008
Date

**REQUEST FOR REINSTATEMENT AND/OR
WITHDRAWAL OF ABANDONMENT**

Dear Sir:

Applicant is in receipt of the Notice of Abandonment dated March 28, 2008 in the captioned application. This Notice indicates that the application was abandoned because of "Applicant's failure to timely file a proper reply to the Office letter mailed on 20 September 2007." Applicant respectfully requests reinstatement of the application on the following basis.

Applicant filed the following documents, with a properly executed certificate of mailing under 37 C.F.R. 1.8(a), on March 20, 2008:

- Response to Official Action of September 20, 2007;
- Transmittal of Amendment; and
- Request for (three-month) Extension of Time with Applicant's Check No. 4176 in the amount of the \$525.00 fee for a three-month extension of the time to respond.

Receipt of the above-listed documents by the Office was acknowledged by date stamp on the return postcard included with those documents at the time of filing. Copies of the above-listed documents are enclosed for the convenience of the Office, as is a copy of the PTO-stamped postcard indicating the Office's acknowledgement of receipt.

01/13/2009 CKHLOK 00000006 09442819
01 FC:2253

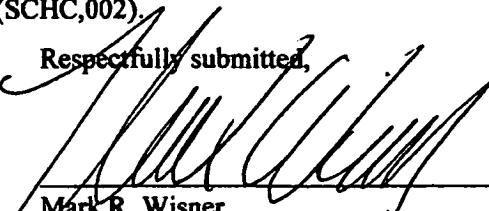
525.00 OP

Adjustment date: 01/13/2009 CKHLOK
03/24/2008 EHAILE1 00000021 09442819
01 FC:2253 -525.00 OP

Two telephone calls to the Examiner inquiring as to reinstatement prompted no action to reinstate this application, nor did a telephone inquiry to the Office's Customer Service line cause the Office to act in the case. Applicant therefore files this written Request for withdrawal of the Notice of Abandonment of the application, reinstatement of the application, entry of the amendments outlined in Applicant's Response to Official Action of September 20, 2007 and consideration of the remarks set out therein, reconsideration and withdrawal of the rejections, and passage of the application to issuance.

Although there should not be any fee for this request for reinstatement, in the unforeseen event a fee is assessed, the Commissioner is authorized to charge the Deposit Account of Wisner & Associates, Account No. 50-0965 (SCHC,002).

Respectfully submitted,



Mark R. Wisner
Registration No. 30,603
1177 West Loop South, Suite 400
Houston, Texas 77027-9012
Telephone: (713) 785-0555
Facsimile: (713) 785-0561

ATTORNEY FOR APPLICANT(S)

Date: August 7, 2008